

Applicant: Frederick Murray Burg
Application Serial No.: 10/828,397
Filing Date: April 20, 2004
Docket No.: 2002-0540
Reply to Office Action dated October 16, 2009
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REMARKS

Pursuant to the final Office Action mailed October 16, 2009, Applicant requests reconsideration. To further prosecution of this application, each of the issues raised in the Office Action is addressed herein.

Claims 1-17, 19-32, and 34-41 are currently pending in this application, of which Claims 1, 20, and 32 are independent claims. Claims 1, 20, 32, and 34 have been amended to correct minor informalities and to further clarify that which the Applicant considers to be the invention. Support for the amendments can be found in the specification at page 10, lines 7-24 and pages 11 through 14, as well as throughout the remainder of the specification. The application as now presented is believed to be in allowable condition.

I. Claim Objections

Claim 34 has been objected to because Claim 34 depends on a previously canceled claim. Claim 34 has been amended to depend on Claim 32. Therefore, it is submitted that the objection to Claim 34 has been obviated.

II. Claim Rejections under 35 U.S.C. § 112

Claim 1 has been rejected under 35 U.S.C. § 112 due to minor informalities. Specifically, Claim 1 has been rejected because there was no antecedent basis for the terms "the server" and "the time included in the text-based message". Claim 1 has been amended to correct these informalities. Therefore, Applicant respectfully requests that the rejection of Claim 1 under 35 U.S.C. § 112 be reconsidered and withdrawn.

II. Claims Rejected Under 35 U.S.C. § 103

Claims 1-17, 19-32, and 34-41 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,259,772 (*Stephens*) in view of U.S. Publication No. 2003/0009530 (*Philonenko*).

Neither *Stephens* nor *Philonenko*, alone or in combination, teach or suggest sending a first alerting signal to the network device to be called and a second alerting signal to the caller network device automatically by the server at the time included in the text-based message, wherein the first and second alerting signals are sent to each of the caller network device and the called device at the time included in the text-based message received prior to an attempt to call the called device so that the caller network device and the called network device are called at the time included in the text-based message, as now required by amended 1, 20, and 32.

Furthermore, neither *Stephens* nor *Philonenko*, when considered alone or in combination, teach or suggest sending at least one of an instant message and an e-mail to the caller network device after attempting to connect the called network device to the caller network device fails and in response to the first connection signal not being received from the called network device, as now required by amended Claims 1, 20, and 32.

Stephens teaches that a calling party can specify a delivery time for which a message is delivered to a called party and that the called party in response to receipt of the message can call the calling party back. (*Stephens* col.6, lines 31-33; col. 7, line 64 through col. 8, line 2; col. 9, line 49 through col. 10, line 19). Specifically, *Stephens* teaches that when "a [calling party] has elected to select delivery time, the processor 166 accesses the stored message store 168 and generates a prompt on the line which may, for example, read 'You will now be asked to enter the time, using the 24 hour clock, for the first message delivery attempt. Please enter the four digits of the time.'" (*Stephens* col.7, line 63 through col. 8 line 2).

Upon successful delivery of the message from the calling party to the called party in *Stephens*, the stored message generated by the calling party is played back to the called party. (*Stephens* col. 9, lines 39-60). After receiving the message, the called party can reciprocate by leaving a message for the calling party or the called party can call back the calling party. (*Stephens* col. 9, line 61 through col. 10 line 11). Thus, "the message [left by the calling party] will have been delivered [to the called party] and the called party may either have recorded a reply for later delivery [to the calling party] or access, or have attempted to place a call back to the original calling party."

However, *Stephens* fails to teach or suggest first and second alerting signals are sent automatically by a server to each of the caller network device and the called device at the time included in the text-based message received prior to an attempt to call the called device so that the caller network device and the called network device are each called by the server at the time included in the text-based message, as now required by amended 1, 20, and 32. Furthermore, *Stephens* fails to teach or suggest sending at least one of an instant message and an e-mail to the caller network device after attempting to connect the called network device to the caller network device fails and in response to the first connection signal not being received from the called network device, as now required by amended Claims 1, 20, and 32.

Philonenko teaches that a customer can view an interface that displays agent availability status and that "a contact option 76 enables [the] viewing customer to initiate a callback from one of the 12 available agents", which places the customer in a queue. (*Philonenko* paragraph 0063). *Philonenko* teaches that "the agent user" can be "a callback server that automatically initiates callback calls to a customer 9 based on that user's callback preferences and routes the call to an agent after the customer answers." (*Philonenko* paragraph 0093). The callback preference information can be filled out in a form on a web page. (*Philonenko* paragraph 0102). Customer presence software (CPS) of *Philonenko* may be "facilitated as sort of a callback queue wherein a plurality of the agent's customers may be directed to if the agent of contact happens to be busy at the time of contact." (*Philonenko* paragraph 0116). "During the period of waiting [in

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the queue], customer status and call back preferences are propagated to the subscribing agent and estimated times of response and other information [may] be propagated to the waiting customers." (*Philonenko* paragraph 0116).

However, *Philonenko* fails to teach or suggest first and second alerting signals are sent automatically by a server to each of the caller network device and the called device at the time included in the text-based message received prior to an attempt to call the called device so that the caller network device and the called network device are each called by the server at the time included in the text-based message, as now required by amended 1, 20, and 32. Furthermore, *Philonenko* fails to teach or suggest sending at least one of an instant message and an e-mail to the caller network device after attempting to connect the called network device to the caller network device fails and in response to the first connection signal not being received from the called network device, as now required by amended Claims 1, 20, and 32.

The claimed invention advantageously allows a caller to arrange a telephone call with another person at a future time such that the telephone call occurs automatically at the arranged time. As a result of the claimed invention, a time is arranged, at which each party is automatically called in response to the text-based message being received prior to an attempt to make a telephone call. The claimed invention also allows an instant message or e-mail to be sent to the caller network device when a first connection signal is not received from the called network device and the attempt to connect the caller network device with the called network device fails.

For at least the reasons above, neither *Stephens* nor *Philonenko*, when considered alone or in combination, fail to teach or suggest all of the elements required by amended Claims 1, 20, and 32. Applicants note that in order to support a claim of *prima facie* obviousness, the cited references must teach or suggest each and every element of the invention, as claimed, and there must be a basis for combining the references and the prior art as suggested. However, nothing in the art of record, when considered alone or in combination, teaches or suggests each of the

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elements, as required by Claims 1, 20, and 32. That is, one skilled in the art would not find the claimed invention, *as a whole*, to be obvious in view of the art of record because the art of record, even in combination, fails to meet the limitations recited in independent Claims 1, 20, and 32.

When determining obviousness "the examiner must step backward in time and into the shoes worn by the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made." (MPEP § 2142). "In view of all factual information, the examiner must then make a determination whether the claimed invention 'as a whole' would have been obvious at that time to that person." (MPEP § 2142). Applicants note that it is impermissible to engage in hindsight to reconstruct the claimed invention to support a conclusion that the claim limitations, not found in the cited combination, would be obvious one skilled in the art. Failing to find such a teaching or suggestion, Applicants submit that Claims 1, 20, and 32 are patentable over the art of record.

Applicant respectfully submits that Claims 2-17 and 19, which ultimately depend from Claim 1, Claims 21-31, which ultimately depend from Claim 20, and Claims 34-41, which ultimately depend from Claim 32, are patentable over the art of record by virtue of their dependence. Further, Applicant submits that Claims 2-17, 19, 21-31, and 34-41 define additional patentable subject matter in their own right. Therefore, it is respectfully requested that the rejection of Claims 1-17, 19-32, and 34-41 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

CONCLUSION

Entry of the amendments to Claims 1, 20, 32, and 34; favorable consideration of Claims 1, 20, 32, and 34 as amended; favorable reconsideration of Claims 2-17, 19, 21-31, and 35-41; and allowance of pending Claims 1-17, 19-32, and 34-41 are solicited.

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In view of the foregoing amendments and remarks, the subject application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this Amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number provided below to discuss any outstanding issues.

Respectfully submitted,

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